

REMARKS

The present invention relates to a method for classifying and counting leukocytes.

In the Office Action of June 19, 2007, first, claims 1 and 6 - 10 were provisionally rejected for non-statutory obviousness-type double patenting based on claims 1 - 20 of co-pending Application No. 11/650,962; second, claims 1 - 10 were rejected under 35 U.S.C. § 103(a) based on Sakata et al (EP 0844481 A1) in view of Thompson et al (U.S. Patent Publication 2001/0049091 A1) and Mizukami et al (U.S. Patent 6,004,816).

In view of the foregoing amendments, and as noted below, the explanations of the distinctions of the presently claimed invention with respect to the obviousness-type double patenting rejection and the rejection under 35 U.S.C. § 103(a), it is respectfully submitted that the rejections should now be withdrawn, and the remaining claims allowed forthwith.

Claim Amendments

In the present amendments, claim 1 is amended to include a more specific recitation, new claims 12 and 13 are added and claims 4 and 5 have been canceled. Support for the amended claim 1 can be found, e.g., at page 14, line 8 to page 17, line 7 of the present specification. Support for new claims 12 and 13 can be found, e.g., at page 17, line 11 to page 18, line 18 of the present specification.

Double Patenting Rejection

U.S. Patent Application No. 11/650,962 (the '962 application) does not disclose, suggest, or motivate the following steps comprising the presently claimed method of independent claim 1 or claims 6 - 10 which depend directly or indirectly on claim 1.

- (3) a step of obtaining scattered light peak intensities and scattered light widths of the respective cells based on the measured first scattered light, obtaining scattered light intensities of the respective cells based on the measured second scattered light, and obtaining fluorescence intensities of the respective cells based on the measured fluorescence light; and

- (4) a step of classifying the cells into a first group and a second group based on the scattered light peak intensities and the scattered light widths, the first group including leukocytes and second group including coincidence cells and platelet clumps.

Therefore, there is no reason based on the '962 application for taking steps (3) or (4), and the present application is not properly rejected for obviousness-type double patenting rejection based on the '962 application; accordingly withdrawal of the obviousness-type double patenting rejection based on the '962 application is respectfully submitted to be proper.

Rejection on 35 U.S.C. § 103(a)

Applicant respectfully submits that none of Sakata et al (EP 0844481), Thompson et al (US 2001/0049091) and Mizukami et al (US 6,004 816) disclose or suggest the following steps of the presently claimed method of claims 1 - 3, 6 - 10 and 12 - 13.

- (3) a step of obtaining scattered light peak intensities and scattered light widths of the respective cells based on the measured first scattered light, obtaining scattered light intensities of

the respective cells based on the measured second scattered light, and obtaining fluorescence intensities of the respective cells based on the measured fluorescence light; and

- (4) a step of classifying the cells into a first group and a second group based on the scattered light peak intensities and the scattered light widths, the first group including leukocytes and second group including coincidence cells and platelet clumps.

Therefore, the presently claimed method is not obvious over the asserted combination of Sakata et al, Thompson et al and Mizukami et al, and the rejection should now be withdrawn.

In view of the above, reconsideration, withdrawal of the rejections with respect to claims 1 - 3, 6 - 10, and 12 - 13, and allowance of this application are respectfully submitted to be in order, and such actions are hereby earnestly solicited.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the local Washington, D.C. telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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